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AUTHOR Seltzer, Tammy
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ABSTRACT

This guide for parents explains the changes in the federal special education law resulting from the 1997 amendments to the Individuals with Disabilities Education Act (IDEA). Changes related to the parent's role in decisions about the child's education and in how schools can discipline special education students are highlighted. A question-and-answer format is generally used throughout the guide. After a section summarizing the importance of parental involvement, the next section considers such topics as eligibility under IDEA, disagreements with the school regarding testing, and re-testing requirements. Following a section on the parent's role in the placement decision, a section on writing the Individualized Education Program (IEP) offers tips for parent participation in IEP meetings, members of the IEP team, and placement decisions. The section on disciplining students is explained in questions and answers on suspension of 10 days or less, requirements if the child is suspended for longer than 10 days, the requirement that schools conduct a "manifestation determination" (which determines whether the child's behavior was caused by or related to the disability), misbehavior involving weapons or drugs, and placement in an Interim Alternative Educational Setting. The final two sections summarize parental rights and identify related laws. Contains a listing of "words to know" and resources.

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BAZELON CENTER MENTAL HEALTH LAW

Civil Rights and Human Dignity

1101 15th Street NW
Suite 1212
Washington DC 20005-5002
202/467-5730
TDD 202/467-4232
Fax 202/223-0409
E-mail HN1660@handsnet.org
http://www.bazelon.org

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A New IDEA

A Parent's Guide to the Changes in Special Education Law for Children with Disabilities

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The Bazelon Center is the leading national legal-advocacy organization representing people with mental illness or mental retardation. Through precedent-setting litigation, public-policy advocacy, education of consumers and families, and technical support for local lawyers and other advocates, the center works to define and uphold the rights of adults and children who rely on public services and ensure their equal access to health and mental health care, education, housing and employment. See page 21 for a list of other current publications of interest to parents and child advocates.

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A New IDEA

A Parent's Guide to the Changes in Special Education Law for Children with Disabilities

More than 20 years ago, Congress opened schoolhouse doors for millions of children with disabilities through a federal law guaranteeing them a "free and appropriate public education." In 1990, the law was renamed the Individuals with Disabilities Education Act, or IDEA. The IDEA is the law most people mean when they talk about special education. It requires school systems to design an Individualized Educational Program (IEP) for each child, with parents' participation.

In 1997, Congress again changed the IDEA in various ways. Some of the changes affect your role in decisions about your child's special education. The law also changed how schools can discipline special education students. **A New IDEA** will help you understand what the changes mean for students with emotional and behavioral problems. We also offer tips to help you use the IDEA to protect your child's right to an education. The "words to know" list on page 21 explains many of the abbreviations and special terms used in enforcing the law.

New rules from the Office for Special Education Programs (OSEP), a division of the United States Department of Education, will explain the changes to school officials. In October 1997, OSEP published tentative rules, called proposed regulations. These rules may be changed a little before they become final sometime in 1998. The rules are important to you because school officials will use them to make decisions about what the law means for your child. The resource list on page 22 explains how you can get a copy of the proposed regulations now and, later, the final rules.

YOUR INVOLVEMENT

One of the most important parts of the IDEA has always been parents' involvement in planning their child's education. Schools have to:

- ☆ ask parents' permission to evaluate their child for special education,
- ☆ include parents in the process of developing their child's IEP,
- ☆ give parents notice of any changes the school wants to make in their child's educational placement, and
- ☆ give parents the chance to appeal any school decision affecting their child's education.

Now you will be more involved than ever in the decisions about evaluations and the kind of educational program your child receives.

TIP: "Parent" can also mean a legal guardian or someone "acting as a parent," such as a grandparent or stepparent with whom the child lives. If a child doesn't have a "parent" or is a ward of the state, the school system must appoint a "surrogate parent" to protect the child's interests. A surrogate parent can be someone who knows the child but is not the legal guardian, such as a relative or foster parent. Many courts have a special program to select and train surrogate parents.

GETTING EVALUATIONS

Who can receive services under the IDEA?

Only children who have "qualifying disabilities" and who need special education are entitled to receive services under the IDEA. The new law did not change that.

"Qualifying disabilities" include:

- ☆ mental retardation;
- ☆ hearing impairments (including deafness);
- ☆ speech or language impairments;
- ☆ visual impairments (including blindness);
- ☆ serious emotional disturbance;
- ☆ orthopedic impairments;
- ☆ autism;

- ☆ traumatic brain injury;
- ☆ other health impairments; and
- ☆ specific learning disabilities.

An IQ test by itself doesn't provide enough information for a school to decide whether or not your child qualifies for services, so the school has to conduct other tests. The school system must test a child in every area of the suspected disability, such as health, vision, hearing, and social and emotional status. This is called an evaluation.

Parents and others who are concerned—teachers, counselors, therapists, etc.—can request an evaluation at any time, whenever they suspect the child might need special education services.

What if I think my child needs to be tested but the school disagrees?

If the school doesn't test your child, you have the right to ask for the testing you want. The school must either perform the tests or request a meeting with a neutral decision-maker, called a "due process hearing." If the school requests a due process hearing, you will be invited to attend.

At the hearing, the decision-maker, called a hearing officer, will ask people representing the school to explain why they think a test is unnecessary. Then the hearing officer will ask you to explain why you think your child needs to be tested. After listening to both sides, the hearing officer will make a decision.

TIP: You have the right to bring a lawyer to a due process hearing. The school will not pay for your lawyer, but it must give you a list of lawyers who provide services free or for a small charge. You or your lawyer may bring witnesses to testify at the hearing, such as your child's therapist, a teacher, or a psychiatrist who has evaluated your child. You or your lawyer may also ask questions of the school's witnesses.

What if I don't agree with the school's testing of my child?

If you don't agree with the school's testing, you can ask for a due process hearing yourself. Maybe you believe the school's testing doesn't give an accurate picture of your child's strengths and needs. For example, suppose the school used evaluations done when your child was in a juvenile detention facility. Because your child was

scared and nervous about being locked up, these tests are probably not a good measure of his or her needs and abilities.

If you ask for a hearing and the hearing officer agrees with you, the school system must pay for your child to have an "independent evaluation." However, if the school can show the hearing officer that its testing *was* appropriate, it will not have to pay for an independent evaluation.

What if it takes too long before the school tests my child?

If the testing isn't done by the deadline set by your school system, you can request a due process hearing. You may ask the hearing officer to order the school system to pay for an independent evaluation.

In most school systems, if you don't agree with the hearing officer's decision, you may appeal directly to the federal court. In some school districts, however, you must have another hearing before you can appeal to the court. You can find out about the deadline and appeal process in your school system by calling your state Parent Training and Information Center, or PTI. See the resource list on page 22 for more information about your PTI.

TIP: Remember, you always have the right to get an "independent evaluation." An independent evaluation is testing done by someone who doesn't work for the school district. If you disagree with the school's evaluation and the school doesn't prove that it is appropriate, the school system will have to pay for the independent testing. Otherwise, you must pay for it. Often, private insurance will pay some of the cost. Many hospitals will accept Medicaid for evaluations, though you might have to wait a long time for an appointment.

Does the school have to get my permission to test my child?

Yes. The first time a child is tested to see if he or she is eligible for special education services is called the "initial evaluation." Until the law was changed, schools had to get parents' permission before the initial evaluation. Now schools must get parents' permission before performing *any* evaluation, not just the initial one.

TIP: If you do *not* want the school to evaluate your child, *you must say no*. If you just ignore the school's notice, the school can evaluate your child without your permission. Always put your "no"—and any other important message to your child's school—in writing. Send or take the letter to the principal and the special education office. Be sure to keep a copy for your records.

If you refuse to give permission for testing and the school still wants to test, it must ask for a due process hearing to argue that the testing is necessary and appropriate. This is the same as under the old law. The hearing officer can decide to let the school test your child without your permission. Again, if you disagree with the hearing officer's decision, you can appeal.

If the school tries to test your child without your permission *and* without a hearing, you can request a due process hearing. At the hearing, you or your lawyer can ask the hearing officer to order the school system to stop testing. You or your lawyer can also ask the hearing officer to tell the school district it cannot use testing that was done without your permission.

Once my child is in special education, how often must he or she be tested?

You can ask for testing any time you think your child needs it. Regular testing is especially important for young children, whose needs may change a lot as they grow older. The old IDEA required schools to test children in special education at least once every three years, to make sure the school kept up with the children's changing needs.

Sometimes, however, testing is not necessary. For example, children who are born profoundly deaf probably don't need to have their hearing tested every three years. The new law ends every-three-year testing for children who don't need it.

MAKING PLACEMENT DECISIONS

How and when can I influence where my child will go to school?

Under the old law, parents were automatically members of the IEP team that develops their child's individualized education program. They still are. Schools must invite parents to IEP meetings, and must try to schedule these meetings at a time and place convenient for the parents.

As the team members who know the most about the child, parents should participate as equals, asking questions and sharing opinions. However, school staff have not always treated parents as equals. Many parents have been left out of the most important decision, their child's "placement." A placement is where a child goes to school every day—public or private school, regular classroom or resource room, academic or vocational program. It also describes all the services the child receives there.

The law was changed after Congress learned that schools often had "secret" meetings to decide students' placements before they held IEP meetings. The new IDEA requires schools to include parents in *all* discussions and decisions about placement.

WRITING THE IEP

The IEP team should write a detailed plan describing your child's educational goals and objectives and the services the school will provide to help him or her reach them. The new law changes the IEP in many ways. However, these changes do not take effect *until July 1, 1998*. Starting then, the IEP must be in effect at the beginning of each school year.

You may request an IEP meeting *at any time* during the school year. If you have a concern about your child's progress or educational program, you don't have to wait until the school calls for your child's annual IEP meeting. There is *no limit* on how many IEP meetings can be held in a school year.

TIPS for your participation in IEP meetings:

1. Speak up. Don't be afraid to disagree or ask questions. You can provide important information about your child's strengths and needs.

2. Ask for copies of any papers discussed at the meeting.

3. Don't sign anything you don't understand or don't agree with. If you feel pressured to sign something, you can write "present only" after your name. "Present only" means you were at the meeting, but you aren't committing yourself to anything.

4. Don't forget your own needs. If you could use classes or services that would help your child learn, you can ask for these services in the IEP. For example, a professional can come to your home and help you work on your child's behavior.

5. Bring a tape recorder. Taping the meeting will give you a chance to listen to it as often as you like and will give you time to think about the important issues affecting your child.

6. Take your time. Don't feel pressured to make a decision on the spot. If you are not sure how you feel about a particular decision, ask the other members of the team for a few days to think it over. You can use the extra time to talk it over with people you trust.

Who should be on my child's IEP team?

The new IDEA requires that the IEP team include a regular education teacher if a child is or may be in a regular classroom. If your child is not in a regular classroom but you want to move him or her into one, you may ask for a regular education teacher to be at the IEP meeting. The IEP team must also include the child's special education teacher or provider of special education services. Another member of the team must be a representative from the school system who is both qualified to provide or supervise special education services and knowledgeable about the district's resources.

The old law required the school staff who tested a child for the initial evaluation to be a part of the first IEP team to decide if the child is eligible for special education services. Under the new IDEA, the school staff who actually evaluated your child do not have to come to the IEP meeting, although you can ask them to attend. But the IEP team must always include a person who is knowledgeable

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about evaluations in general and knows how to use them to develop educational programs for the classroom.

TIP: Remember, you can bring to the IEP meeting anyone who has "knowledge or special expertise." For example, you could bring your child's therapist, a teacher who worked well with your child in the past, another parent who has been through the IEP process, or an educational advocate or lawyer. However, the new IDEA makes it harder for lawyers to be paid by the school system for attending IEP meetings, so some lawyers may not want to attend because they won't be paid for the time they spend there. Other professionals, such as your child's therapist, may also expect payment for coming to the IEP meeting. Often, professionals who see your child on a regular basis will not charge you for an IEP meeting, but be sure to ask them in advance if they expect to be paid.

My child's behavior is a problem. How will the school evaluate it?

The new law requires schools to write IEPs based on evaluations that look at everything a child can and cannot do—strengths as well as their weaknesses.

Does your child have a hard time sitting at a desk for more than a few minutes at a time? Does he or she wander around the room, talking loudly and disrupting other students? If an IEP just focused on this problem—not being able to sit still—your child's educational plan could list goals and objectives for sitting longer at the desk. But the law requires teachers to use a child's strengths to develop classroom techniques and strategies that will work for your child. For example, the teacher could start with desk exercises designed to last just five minutes, followed by other exercises that involve moving around the room and working with other students on group projects.

Schools can no longer ignore behavior that affects how your child learns. The law requires schools to develop *positive* ways to address student behavior. Schools must write IEPs that reward students for appropriate behavior and don't focus on punishment to change inappropriate behavior. The new law also requires schools to change the educational program so that students who have behavioral problems can succeed.

Students with behavior problems may also receive related services, such as psychological counseling, both for the student and

his or her family. The new laws should lead to better educational plans, which may help to prevent disciplinary problems.

What will happen when my child finishes school?

The new IDEA places more importance on transition planning—preparing young people for life after they leave high school. The IEP must now begin transition planning when the student turns *14* (formerly, the age was 16). Planning earlier should help students become better prepared for the future and give students who are in danger of dropping out a reason to stay in school.

Like everything in your child's IEP, the transition plan should be designed to fit his or her individual needs and interests. Transition planning can include preparation for college, employment or independent living. It must go beyond developing classroom instruction. It should include community experiences such as employment—learning job skills and how to apply for a job, for example—and other adult-living objectives and, where appropriate, improving daily-living skills and obtaining a functional vocational evaluation.

TIP: Make sure your child is included in development of the transition plan. The law says that the student is a member of the IEP team "whenever appropriate" and whenever transition planning is discussed. Almost all young people can express their interests in particular jobs or living arrangements. Participating in IEP meetings also teaches your child the self-advocacy skills he or she will need to become independent as an adult.

Should my child attend "regular" classes?

Schools must educate children with disabilities in the "least restrictive environment." This usually means providing whatever services and supports a child needs in order to be taught with children who do not have disabilities.

Schools may place children with disabilities in separate classrooms or schools *only* when supports and services are not enough to help the child learn in a regular classroom. School systems must also place children with disabilities in their neighborhood schools—the same schools they would attend if they

didn't have disabilities—unless a student's IEP calls for a different placement.

In spite of the law, and in spite of studies that show the tremendous benefits of including children with disabilities in the regular education classroom, many school districts have been slow to include them. This is a particular problem for students with emotional or behavioral problems, who are often put in special education classes.

Every child has different strengths and needs. Decisions about what is the "least restrictive environment" will always depend on a child's individual situation.

What will my child be taught if he or she is in special education?

The new IDEA sends a stronger message about the school's duty to include students with disabilities in the regular school setting. Schools must assume that all students with disabilities can be taught using the general curriculum, and then make whatever adjustments are appropriate for your child.

Schools may not create just one "special education" curriculum, because every special education student has different strengths and weaknesses. The school must start with the general curriculum and make changes until the work is right for your child. It may not create a curriculum for your child that is completely different from the material used by regular education students. If the rest of the fifth-graders are learning about ancient Egypt, then your child should learn about ancient Egypt, too.

Also, the school system must provide whatever services a child needs because of a particular disability—for example, orientation and mobility training for students with visual impairments.

TIP: The IDEA now requires schools to include students with disabilities in any system-wide assessments, unless a student is unable to take the test, even with accommodations. Make sure your child receives any accommodations he or she needs, such as extra time, having the questions read aloud, help with filling in the answer sheet, or a room without distractions.

DISCIPLINING STUDENTS

The changes about disciplining students with disabilities are the most confusing part of the new law. Most important, school systems must now continue to teach students who are suspended for more than a total of 10 days in a school year or who are expelled. Where and how they are taught depends on the behavior that got the student into trouble.

There are special rules, explained below, for students accused of drug or weapon offenses and for students the school says are "dangerous to themselves or others."

What will happen if my child is suspended for 10 days or less?

Schools may suspend a student who has a disability for up to a total of 10 days in a school year for any behavior that would suspend a student who does not have a disability. According to the U.S. Department of Education, if your child is suspended for a total of 10 or fewer days, the school does *not* have to provide any education or support services during that time. However, the school may choose to place your child in an "interim alternative educational setting," described later.

TIP: There is disagreement about whether schools must include parents in discussions about discipline that may involve making an alternative placement or suspending or expelling a student. Because disciplinary actions could lead to a change of placement, parents should ask to be included in any discussions about discipline. If you are excluded, you may request a due process hearing to challenge any discipline imposed on your child.

If my child has been expelled or suspended for longer than 10 days, will education stop?

No. The most important change in the law is that schools must continue to provide services to special education students who are suspended or expelled. This is called a "no cessation" rule. Under the old law, special education students who were suspended usually received very few, if any, services while they were out of school—even though depriving them of an education was illegal in most states. Students who were expelled often received no services at all. The new IDEA requires school systems to continue providing a "free appropriate public

education," called FAPE—even to students with disabilities who are suspended or expelled. And after the first 10 days without any services, FAPE means a *full education program*, not just a few hours of home tutoring.

This is a very, very important change for students who are suspended or expelled often, because their education will not be disrupted. Although students may have to change schools, they will still receive an education. It also sends an important message to schools that they cannot use suspensions or expulsions as a way of getting rid of special education students.

Schools must conduct a "manifestation determination." What is that?

Immediately after school officials decide to discipline a special education student, they must conduct what is called a "manifestation determination." That means the IEP team, with other qualified school personnel, must determine whether the child's behavior was caused by or related to his or her disability. If school officials cannot act immediately—because of a weekend or holiday, for example—they must still hold a manifestation determination within 10 days after they decide to discipline a student.

Before the IEP team makes a manifestation determination, it must collect all relevant information: educational evaluations, observations by the parents and school professionals, the student's IEP and the nature of the student's placement. Then the student's IEP team—remember, it has to include the parents—must decide:

- Were the child's IEP and placement appropriate?
- Were all necessary special education services, supplementary aids and services, and behavior intervention strategies provided?
- Did the child's disability affect his or her ability to understand the impact and consequences of the behavior for which the school wants to discipline the child?
- Did the child's disability affect his or her ability to control the behavior?

If the IEP team decides that the child's behavior was *not* related to the disability, then the student may be disciplined just like a student without disabilities. (However, the no cessation rule still applies.)

If the IEP team decides that the behavior *is* related to the child's disabilities, then there are special rules, described below, for students who are accused of drug or weapons offenses or of being

"dangerous." The law is not clear, however, about what schools can do to discipline students whose behavior is related to the disability but doesn't involve drugs, weapons or dangerousness.

TIP: Although the U.S. Department of Education's proposed regulations say that the IDEA does not require a school district to provide education services during the first 10 days of a child's suspension, your state or local laws may require it. You can find information about your state or local laws in public libraries or from your state Parent Training and Information Center (PTI). And some states have an ombudsman or parent coordinator who could provide this information. See the resource list on page 22 for how to get information about your state.

What about a child whose misbehavior involved weapons or drugs?

The old law allowed children to "stay put" if the school wanted to change their educational placement and their parents disagreed. The parents would request a due process hearing and, until the hearing officer made a decision, their child had a right to stay in his or her school. Under the new IDEA, children still have a right to "stay put" when a school wants to change their placement—unless they are accused of drug or weapons offenses.

The new law allows a school system to place a student in a temporary "Interim Alternative Educational Setting" (IAES) if he or she:

1) carries a weapon to school or to a school function; or
2) knowingly possesses, uses, sells or tries to sell illegal drugs while at school or at a school function.

The school system can place that child in an IAES for as many days as it would discipline a child without disabilities. However, it may *not*, under any circumstances, place a child with disabilities in an IAES for more than *45 calendar days*.

What will happen if the school says my child is "dangerous"?

If the school accuses your child of being "dangerous" and wants to change his or her placement for more than 10 days, your child has a right to "stay put" unless a hearing officer orders placement in an IAES.

If school officials believe that your child's current placement is "substantially likely to result in injury to the child or to others,"

they may want to place your child in an IAES. However, unlike the situation with weapons and drugs, they must get your permission to move your child because of dangerousness. If you disagree, tell the school system you reject the placement and request a hearing.

If, at the hearing, the school system shows "substantial evidence" that keeping your child in the current placement is "substantially likely" to result in injury to your child or to others, the hearing officer can order your child placed in an IAES for up to 45 days.

TIP: "Substantial" means that if a hearing officer balances the school's evidence against the parent's evidence, the school's evidence is *much* stronger. If the school's evidence is just a little stronger, then the hearing officer will not place the child in an IAES. For example: A student is caught fighting. The principal and a teacher who saw the fight tell the hearing officer that the fight led them to believe the student is a danger to others. The parent's lawyer presents the school psychologist and another teacher who knows the student well, who talk about the progress this student has made with his behavior and describe their current plan for dealing with outbursts. While everyone agrees that the student was fighting, the school has not shown that he is "substantially likely" to be dangerous to others in the future.

The hearing officer must also consider whether the child's current placement is appropriate and whether the school has made a reasonable effort to reduce the risk of harm to the child and to others.

Finally, if your child is to be placed in an IAES, the hearing officer must make sure the IAES:

- ☆ allows your child to participate in the general curriculum;
- ☆ provides to your child the services and modifications described in his or her IEP; and
- ☆ provides whatever is needed to address the behavior that got your child placed in an IAES.

What kind of a placement is an Interim Alternative Educational Setting (IAES)?

An IAES is any place where your child receives educational services that is not the child's usual educational placement. An IAES could be a different class in the same school building or a different school. Because of the strict requirements for an IAES, an IAES probably cannot be located at the child's home.

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Even when placed in an IAES, your child must be allowed to continue receiving instruction and participating in the school's general curriculum. If the general curriculum involves a field trip to study dinosaurs, for example, then you can argue that your child should be included because the IAES must provide the same experience.

In an IAES, the child has a right to receive the same services and modifications described in his or her IEP to meet the IEP goals. For instance, children who require psychological counseling must continue receiving it in their IAES. In addition to providing the IEP services, schools must also provide whatever is needed to address the behavior that got the child placed in an IAES.

Who can place my child in an IAES?

If a student has committed a drug or weapons offense, *a school system* can place the student in an IAES for more than 10 days. If a student is accused of being dangerous, only *a hearing officer* may place the student accused in an IAES for more than 10 days.

The IEP team (or the hearing officer, in a dangerousness case) chooses the IAES. Because parents must be members of the IEP team, you *must* be included in any discussion of an IAES for your child.

TIP: When working with the other members of the team to write your child's IEP, plan ahead. Include the kinds of services you would like the school to provide if your child is ever placed in an IAES. If your child needs to interact with other students for his or her social and emotional development, include that information in the IEP. You may be able to prevent your child's isolation from other students as part of future placement in an IAES.

KNOWING YOUR RIGHTS

Your right to notice

If a school system wants to discipline your child, it must tell you on the *same day* the decision is made. The notice it gives you about the disciplinary action, whether a phone call or a letter, must include information about your right to appeal and any other procedural protections you have, such as the right to hire an attorney and to receive attorney's fees if you win.

If you don't receive a call or letter, you should act immediately. You can request an expedited due process hearing or you can talk with your PTI or an attorney about what else you could do.

"Functional Behavioral Assessment" and "Behavioral Intervention Plan"

Under the new law, the school district must schedule an IEP meeting within 10 days after taking a disciplinary action. If the student being disciplined has not already received a "functional behavioral assessment" and does not have a "behavioral intervention plan," the IEP team must conduct such an assessment and must develop a plan to address the behavior that got the child into trouble.

If your child already has a functional behavioral assessment and a behavioral intervention plan, the IEP team should review the plan and make any changes necessary to address the behavior that got the child into trouble.

Your right to examine all records.

The new law is the same as the old law. You have the right to see *all* your child's school records. This includes notes from IEP team meetings, evaluations, disciplinary notices, progress reports and reports from related service providers. If the school system refuses to let you see your child's records, you can request a due process hearing or file a complaint with your state educational agency.

Your right to a due process hearing

The due process hearing is the place to bring your complaints about the education your child receives. You are entitled to a due process hearing if you disagree about:

☆ what the school has done,

- ☆ what the school wants to do, or
- ☆ what the school has refused to do.

Under the new IDEA, school systems must create a "hearing request form." If your school system does not have a hearing request form, you can request a hearing by writing a letter to the hearing office.

You must ask for a due process hearing *in writing*. Remember to date your form or letter, and keep a copy.

Your request must have the following information:

- ☆ your child's name, address and school;
- ☆ what you are complaining about, including enough information for the hearing office to understand what happened; and
- ☆ how you want the school district to fix the problem.

The school system must hold a due process hearing and send you the hearing officer's decision within 45 days of your request.

A due process hearing can be a lot like going to court, although not as formal. You may bring witnesses to testify, and you or your lawyer may ask questions of the school district's witnesses.

The school district will have a lawyer. Because hearings can involve complicated legal issues, you should consider hiring a lawyer too. The school district must give you a list of lawyers who provide services free or for only a small charge. If you win the case, the school district will pay your legal fees.

If you request a hearing to appeal a manifestation determination, you have the right to an "expedited" hearing. The new IDEA does not explain what "expedited" means. However, the Department of Education's proposed rules say it means 10 business days.

You have the right to mediation

Under the new IDEA, you have the right to request mediation. Mediation is less formal than a due process hearing. It is run by a mediator, a person trained to work with people who are in conflict. The mediator helps parents and the school system agree on a way to handle the parents' complaint. Some parents like mediation better than due process hearings because it feels as if they are working with the school system to find an answer.

Mediation is voluntary. No one can require you to go to mediation for any reason. For example, you do not have to go to mediation before you have a due process hearing, and the school system cannot use mediation to delay the hearing process.

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OTHER LAWS TO HELP YOUR CHILD

The IDEA isn't the only law that protects the rights of students with disabilities. If your child is having a problem in school that isn't corrected by IDEA, don't give up. Your child may have protections under one or more of the other laws.

Section 504 of the Rehabilitation Act of 1973 (§ 504) provides comprehensive and detailed educational rights to children with disabilities. The Americans with Disabilities Act (ADA) also provides protections.

The education rights of children with disabilities are also shaped by their rights under the United States Constitution to equal protection of the laws and due process, and by civil rights laws that prohibit discrimination on the basis of race and sex.

Various federal laws also provide specific educational rights. They guarantee equal educational opportunity to students with limited English-language skills, certain basic rights to homeless students, and quality programming to youth in vocational education and to educationally disadvantaged students participating in compensatory education programs.

States may also have laws that provide rights to students with disabilities. If a state law undermines, contradicts or violates the IDEA or other federal laws, then it is not valid. However, some states' laws can provide *more* protection than the IDEA. A state may not have had time to change its laws to match the new IDEA provisions, so you should keep your eyes open and tell other parents about the new federal rules.

WORDS TO KNOW

Due Process Hearing—If you disagree with the school's decision, you may ask for a due process hearing. At a due process hearing, you have the right to bring a lawyer, and it is wise to do so. The school will not pay for your lawyer, but they must give you a list of lawyers who provide services free or for a small charge. You or your lawyer may bring witnesses to testify and may ask questions of the school's witnesses. If you win, your attorney's fees will be paid by the school district.

IDEA—Individuals with Disabilities Education Act. The IDEA is the law most people mean when they talk about special education.

IEP—Individualized Education Program. The IEP is a detailed plan describing your child's educational goals and objectives and the services the school will provide to help your child reach them and learn the general curriculum—what other students are expected to learn.

IEP Team—the people who work together to develop the IEP. Under the new law, the IEP team must include: the parents; at least one regular education teacher, if your child takes or *may be able to take* regular education classes; at least one of the student's special education teachers or service providers; a representative of the school district; a person knowledgeable about evaluations; other people the parents or school district want to invite who have special knowledge about the student; and the student, if appropriate and when discussing transition planning.

Independent Evaluation—testing done by someone who does not work for the school district.

Initial Evaluation—the first time a child is tested to see if he or she is eligible to receive special education services.

Interim Alternative Educational Setting (IAES)—a temporary educational placement for children who are disciplined for drugs or weapons or for children whom hearing officers have found to be a danger to themselves or others in their current school placements.

Least Restrictive Environment—means that children with disabilities should be taught with children who do not have disabilities. Schools may place children with disabilities in separate classrooms or schools *only* when supports and services are not enough to help the child learn in a regular education classroom.

Manifestation Determination—a decision made by the IEP team and other qualified personnel about whether the child's behavior was a product of his or her disability. If a child's behavior is a manifestation of the disability, the school must discipline that student differently than if the behavior is not a manifestation of the disability.

No Cessation—means the school district must continue to provide a "free and appropriate public education," called FAPE, even to students who are suspended or expelled. This is called the "no cessation" rule. The U.S. Department of

Education's proposed regulations say that schools do not have to provide FAPE until the suspension or expulsion has lasted a total of 10 days in any school year.

Placement—where your child goes to school every day (public or private school, regular classroom or resource room, academic or vocational program) and all the services he or she receives there.

Transition Plan—Once a student turns 14, the IEP must include a transition plan, describing how the school will prepare the student for life after high school, such as college, employment or independent living.

Triennial Evaluation—Students in special education must be retested at least every three years. This retesting is called a "triennial evaluation."

RESOURCES

To get a copy of the proposed regulations:
By mail: Call 1-800-USA-LEARN (1-800-872-53276) to request a copy.
Via the Internet: Visit the Department of Education's official IDEA '97 web page: http://www.ed.gov/offices/OSERS/IDEA/frnotice.html
In Braille: Call Laura Black Price at 202-205-8969 or e-mail her at Laura_Black_Price@ed.gov.

Federation of Families for Children's Mental Health—a national parent-run organization focused on the needs of children and youth with emotional, behavioral or mental disorders and their families. To find your state's chapter, contact FFCMH, 1021 Prince Street, Alexandria VA 22314. Telephone: (703) 684-7710. E-mail: ffcmh@crosslink.net; website: http://www.ffcmh.org

National Association of Protection and Advocacy Systems (NAPAS)—a federally funded network of organizations (P&As) that provide legal services to children and adults with disabilities. To find the nearest office, contact NAPAS, 900 2nd St., NE, Suite 211, Washington DC 20002. Voice: (202) 408-9514; TTY: (202) 408-9521. E-mail: hn4537@handsnet.org; website: http://www.protectionandadvocacy.com

National Information Center for Children and Youth with Disabilities (NICHCY)—has many useful publications about the special education process, including a resource list for each state, and can answer individual questions from parents. For information and assistance or to receive a publications catalog, contact NICHCY, P.O. Box 1492, Washington DC 20013. Voice/TTY: 1-800-695-0285 or (202) 884-8200. E-mail: nichcy@aed.org; website: http://www.nichcy.org

Parent Training and Information (PTI) Centers—exist in every state to assist parents of infants, children and youth with disabilities in understanding their rights under federal and state law and to help them develop skills to be effective members of the team planning their child's education. To find the PTI in your state, contact NICHCY (above).

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Publications for Parents and Advocates about the Rights of Children with Disabilities

❑ Your Family and Managed Care
Guide for families of children with mental, emotional or behavioral disorders. Booklet explains how managed care can improve your child's access to services, how managed care controls costs, what you can do and what to watch out for, with a checklist to grade a managed care plan you're considering. September 1996, 16 pages, $3.50 plus shipping. F-2 in English; F-2S in Spanish.

❑ SSI—Help for Children with Disabilities.
Handbook on what parents need to know for their child to qualify for federal supplemental security income (SSI) and the free health care that comes with SSI in most states. Explains changes in federal law that tightened the rules for eligibility and how to appeal if your child is denied benefits. December 1997, 20 pages, $3 plus shipping. SS-3 in English; SSp-3 in Spanish.

❑ A Family Advocate's Guide to Managed Behavioral Health Care for Children and Youth
Guiding principles on how managed care can work for children with mental, emotional or behavioral disorders. Includes handouts to copy. August 1996, 34 pages. $9.95 plus shipping, includes a copy of *Your Family and Managed Care* in the same language. F-1 in English, F-1S in Spanish.

❑ A Dubious Bargain
What the 1996 welfare law means for children with mental or emotional disorders and their families. Five issue papers with advocacy recommendations for a state's decisions that can help—or at least avoid harming—children and their families. December 1996. $7 plus shipping. W-1-5.

❑ Making Medicaid Work to fund intensive community services for children with serious emotional disturbance
Advocacy guide to financing key components of a comprehensive system of care. Lists states' use of EPSDT and the rehabilitation option, targeted case management and other approaches, highlighting the most successful. July 1994, 100 pages. $9.50 plus shipping. C-6.

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